Senate Bill No. 1508

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Passed the Senate   August 26, 2004

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Secretary of the Senate

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Passed the Assembly   August 24, 2004

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Chief Clerk of the Assembly

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This bill was received by the Governor this _____ day of

_____, 2004, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 7.6 (commencing with Section 1922) to Title 4 of Part 4 of Division 3 of the Civil Code, relating to real property loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1508, Ducheny.   Real property loans: restrictions: code violations.

Existing law regulates the transfer of real property and the recording of liens on real property.

This bill would prohibit a person or entity, other than a federally or state chartered financial institution, from making a loan secured by a deed of trust or mortgage on non-owner-occupied residential real property if the person or entity has actual or constructive notice that a notice of pendency of action relative to a code violation has been recorded against the property by the local code enforcement agency, unless the loan does not exceed certain amounts, or unless a portion of the loan is withheld pending compliance with the code enforcement notice or disbursed to pay for construction work. The bill would provide that a loan made in violation of these provisions is not void or voidable.

The people of the State of California do enact as follows:

SECTION 1.   Chapter 7.6 (commencing with Section 1922) is added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 7.6.   RESTRICTIONS ON REAL PROPERTY LOANS

1922.   (a) Except as provided in subdivision (b), no person or entity shall make a loan secured by a deed of trust or mortgage on non-owner-occupied residential real property if the person or entity has actual or constructive notice that a notice of pendency of action, as defined in Section 405.2 of the Code of Civil Procedure, has been recorded against the property by the local code enforcement agency pursuant to subdivision (a) of Section 17985 of the Health and Safety Code or Section 405.7 or 405.20 of the Code of Civil Procedure.

(b) Subdivision (a) shall not apply in either of the following cases:

(1) In the case of a purchase loan, if the amount of the loan does not exceed the purchase price or fair market value, whichever is lower, or in the case of a refinance loan, if the amount of the loan does not exceed the amount of the outstanding liens on the property. Fair market value shall be determined by an appraiser, licensed or certified by the Office of Real Estate Appraisers, for the applicable transaction.

(2) The amount of the loan exceeds the amounts specified in paragraph (1), and the lender withholds the excess and disburses those loan proceeds to the person or entity legally entitled thereto as follows:

(A) Loan proceeds that will be used to cure the code violations and complete other construction improvements being made to the real property shall be disbursed as payment for construction work.

(B) Any amount in excess of that reasonably sufficient to cure the code violations and complete other construction improvements being made to the real property shall be withheld pending compliance with the code enforcement notice.

(C) If loan proceeds are held and are disbursed from escrow, the lender shall be entitled to accrue interest from the date the loan proceeds are deposited in escrow.

(c) Nothing in this section shall prohibit a lender from applying the loan proceeds of a loan described in subdivision (b) for the payment of reasonable fees, costs, and expenses necessary to make or arrange the loan.

(d) If a construction loan disbursement account is established with the lender or through an independent joint control agent, as defined in Section 17005.1 of the Financial Code, the loan proceeds of a loan described in subdivision (b) may also be applied to the reasonable fees, costs, and expenses for this purpose.

(e) This section does not apply to a loan made by a federally or state chartered financial institution.

(f) No loan made in violation of this section is either void or voidable.

Approved —————————————————, 2004

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                                          Governor